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MAR 06 2006

OFFICE OF PETITIONS

In re Application of :
Yufera et al. :
Application No. 10/630,367 : **DECISION REFUSING STATUS**
Filed: July 30, 2003 : **UNDER 37 CFR 1.47(a)**
Attorney Docket No. 2429-1-024 :
Title: ENTOMOPATHOGENIC :
MICROORGANISM SPORES CARRIER AND :
METHOD FOR CONTROLLING HARMFUL :
INSECTS :

This is in response to the petition filed January 25, 2006 (certificate of mailing January 13, 2006), under 37 CFR. §1.47(a).

The petition under 37 CFR. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR. §1.136(a).

The above-identified application was filed on July 30, 2003, without an executed oath or declaration. Accordingly, on August 23, 2005, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring for the purposes of this decision an executed oath or declaration in compliance with §1.63, and a surcharge for its late filing. This Notice set an extendable two-month period for reply of October 23, 2005.

In reply, applicant filed a petition, the surcharge for late filing of the declaration, and a partially executed declaration. To make the reply timely, a three (3) month extension of time was also submitted. Petitioner has submitted \$130.00 towards the petition fee. However, the current petition fee is \$200.00. Accordingly deposit account 11-1153 will

be charged the \$70.00 difference.

A grantable petition under 37 CFR. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition does not satisfy requirements (1) and (2).

As to item (1), rule 47 applicant has failed to show that inventor Pallares was ever presented with a copy of the application papers. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventors. See MPEP 409.03(d). The evidence presented only indicates that the assignment and declaration were the only documents presented. If the application papers were presented, a statement should be provided on renewed petition.

As to item (2), although petitioner has provided the last known mailing address of inventor Pallares in the petition, the declaration contains the mailing address of the assignee. A supplemental declaration or Application Data Sheet providing the last known address should be provided pursuant to 37 CFR 1.67 and 1.76.

The address on the petition differs from the correspondence address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition. However, the Office will mail all future correspondence solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300

By delivery service:
(FedEx, UPS, DHL, etc.)

U.S. Patent and Trademark Office
Customer Service Window,
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3215.

A handwritten signature in black ink, appearing to read "Charlema R. Grant". The signature is fluid and cursive, with the first name "Charlema" being more prominent than the last name "Grant".

Charlema R. Grant
Petitions Attorney
Office of Petitions

cc: Klauber & Jackson
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